

STATE OF SOUTH CAROLINA

Renewable Power Purchase Agreement between South
Carolina Electric & Gas Company and NDS Energy, Inc.

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2014 - 431 - E

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(Please type or print)

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

- ☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously
☐ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input checked="" type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input checked="" type="checkbox"/> Letter	<input checked="" type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input checked="" type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	



K. Chad Burgess
Associate General Counsel

chad.burgess@scana.com

November 3, 2014

VIA HAND DELIVERY

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RE: Renewable Power Purchase Agreement between South Carolina
Electric & Gas Company and NDS Energy, Inc.
Docket No. 2014 - 431 - E

Dear Ms. Boyd:

South Carolina Electric & Gas Company ("SCE&G"), in compliance with and pursuant to Public Service Commission of South Carolina ("Commission") Order Nos. 81-214 and 85-347 issued in Docket No. 80-251-E, hereby submits to the Commission for review a Renewable Power Purchase Agreement ("Renewable PPA") between SCE&G and NDS Energy, Inc. ("NDS Energy"). SCE&G and NDS Energy entered into the Renewable PPA on October 24, 2014. For the reasons stated herein, SCE&G respectfully requests that the Commission accept the Renewable PPA for filing because the terms of the Renewable PPA comply with the intent of the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the provisions of Commission Order Nos. 81-214 and 85-347. A summary of the key terms and provisions of the Renewable PPA is set forth below.

NDS Energy is a North Carolina corporation and intends to design, construct, and operate—at its own cost—an electric generating facility in Calhoun County, South Carolina ("NDS Facility"). The NDS Facility will use Tire Syngas as its feedstock and as a result, NDS Energy anticipates that its facility will be classified as a qualifying facility under the rules and regulations of the Federal Energy Regulatory Commission, promulgated pursuant to the provisions of Section 210 of PURPA, 16 U.S.C. § 2601, *et seq.* The total nameplate capacity of the NDS Facility will be 4.4 megawatts and the average annual net generation is expected to be 38,544 megawatt hours.

As more fully set forth in the Renewable PPA, NDS Energy will sell to SCE&G all the net energy produced by the NDS Facility for a term of fifteen years.

(Continued . . .)

The 15-year term will commence with the commercial operation date of the NDS Facility. Likewise, SCE&G will buy all the net energy produced by the NDS Facility, which NDS Energy will provide to SCE&G on an “as available” basis.

The Renewable PPA is consistent with the intent of PURPA to encourage the development of qualifying facilities for cogeneration and with the principles which the Commission has established in its orders implementing PURPA. *See* Order Nos. 81-214, 85-347, and 89-56, all issued in Docket No. 80-251-E. Accordingly, the terms of the Renewable PPA are consistent with the public interest. Based on the foregoing, SCE&G respectfully requests that the Commission accept the Renewable PPA for filing and issue an order to that effect. *See* Commission Order No. 81-214 at 18-19, Section III, paragraphs 3-5 and Order No. 85-347 at 29-30, Section II, Part J, and at 35-36, Section III, paragraphs 11-12.

Due to the commercial sensitivity and proprietary nature of certain provisions of the Renewable PPA, SCE&G respectfully requests that the Commission also find that the Renewable PPA contains protected information and issue a protective order barring the disclosure of the Renewable PPA under the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.*, 10 S.C. Code Ann. Regs. 103-804(S)(1), or any other provision of law. Pursuant to 10 S.C. Code Ann. Regs. 103-804(S)(2), the determination of whether a document may be exempt from disclosure is within the Commission’s discretion.

To this end, and in accordance with Commission Order No. 2005-226, dated May 6, 2005, in Docket No. 2005-83-A, we enclose with this letter a redacted version of the Renewable PPA that protects from disclosure the sensitive, proprietary and commercially valuable information, while making available for public viewing non-protected information. We also enclose a copy of the unredacted Renewable PPA in a separate, sealed envelope and respectfully request that, in the event that anyone should seek disclosure of this unredacted Renewable PPA, the Commission notify SCE&G of such request and provide it with an opportunity to obtain an order from this Commission or a court of competent jurisdiction protecting the Renewable PPA from disclosure.

Enclosed are the following:

- (1) A true and correct copy of the original Renewable PPA in a sealed envelope marked “CONFIDENTIAL.” Each page of the Renewable PPA is also marked “CONFIDENTIAL.”
- (2) Ten (10) copies of a redacted copy of the Renewable PPA for filing and public disclosure.

(Continued . . .)

The Honorable Jocelyn G. Boyd

November 3, 2014

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By copy of this letter, we are providing the South Carolina Office of Regulatory Staff ("ORS") with a redacted copy of the Renewable PPA for its records. Additionally, SCE&G will make the original, unredacted copy of the Renewable PPA available to ORS for its review.

Thank you for your assistance and consideration of this matter. If you have any questions, please do not hesitate to contact us at your convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read "K. Chad Burgess", with a stylized flourish at the end.

K. Chad Burgess

KCB/kms

Enclosure

cc: John W. Flitter
Jeffrey M. Nelson, Esquire
(both via hand delivery w/enclosure)

ORIGINAL**THIS COPY TO BE RETURNED FOR FILES
OF S.C. ELECTRIC & GAS COMPANY****THIS AGREEMENT IS SUBJECT TO ARBITRATION****RENEWABLE POWER PURCHASE AGREEMENT**

This RENEWABLE POWER PURCHASE AGREEMENT ("Agreement") is made and entered into this 24th day of October, 2014 (the "Effective Date"), by and between South Carolina Electric & Gas Company ("Buyer" or "SCE&G"), a corporation organized and existing under the laws of the State of South Carolina, and NDS Energy, Inc. ("Seller"), a North Carolina corporation. The Seller and Buyer each may be referred to as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Seller intends, at its sole cost and expense, to design, construct, and operate an electric generating facility (the "Facility"), with a total nameplate Facility Rating of 4.4 MW and anticipated average annual net generation of 38,544 megawatt-hours (MWh), located in Calhoun County, South Carolina as described in more detail in Attachment A; and

WHEREAS, Buyer is willing to purchase and Seller is willing to sell all of the Net Energy of the Facility subject to the terms and conditions and at the prices set forth in this Agreement; and

WHEREAS, Seller has entered into, or will enter into, the necessary agreements for generator interconnection and transmission service, as required, pursuant to which Seller assumes contractual responsibility for making any and all transmission-related arrangements, including ancillary services as described in such agreements, between Seller and SCE&G Transmission for delivery of the Facility's Net Energy to Buyer. The Parties recognize that the transmission service and generator interconnection between Seller's Facility and SCE&G's Transmission System will be provided pursuant to separate agreements; and

WHEREAS, Seller guarantees that the Facility is, or will be, capable of delivering Net Energy to Buyer for the Term of this Agreement in a manner consistent with the provisions of this Agreement.

NOW THEREFORE, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

All references to articles and sections are to those set forth in this Agreement. Reference to any document means such document as amended from time to time and reference to either Party includes any permitted successor or assignee thereof. The following definitions and any terms otherwise defined in this Agreement shall apply for all purposes of this Agreement and all notices and communications made pursuant to this Agreement.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For purposes of this definition, “control” means the direct or indirect power, whether by contract or through the ownership of capital stock or equity interests, to elect a majority of such other Person’s board of directors or similar governing body or to direct or cause the direction of management and policies of such Person.

“Agreement” means this contract, including all Attachments, for the purchase of Net Energy entered into between Seller and Buyer and as amended by the Parties from time to time.

“Attachments” mean the schedules and exhibits that are appended hereto and are hereby incorporated by reference and made part of this Agreement. At the Effective Date, such Attachments include:

“Attachment A”: Description of the Facility, including the Facility’s location and generation capabilities

“Attachment B”: Rates

“Authorization to Construct” means authorization to construct or reconstruct the Facility issued by any appropriate Government Agency to Seller in accordance with the laws of the State of South Carolina or any relevant federal law.

“Business Day” means any day other than Saturday, Sunday or a legal public holiday as designated in Section 6103 of Title 5, U.S. Code.

“Buyer” means SCE&G and its permitted successors and assigns.

“Calendar Year” means the period from January 1 through December 31.

“Commercial Operation” means the status of the Facility once it has commenced generating Net Energy for sale to Buyer, excluding Test Energy.

“Commercial Operation Date” means the date on which the Facility commences Commercial Operation. The Commercial Operation Date will be declared as of the first calendar day of the month following a month during which the Facility achieves an operating level of 4 MW in at least five days of that month.

“Delivery Point” means the point at which the Facility is connected to the SCE&G Transmission System at the high side bushing of the Seller-provided step-up transformer.

“Distribution System” means SCE&G’s distribution system consisting of electric lines, electric plant, transformers and switchgear used for conveying electricity to ultimate consumers, but not including any part of the Transmission System.

“Emergency” means any condition or situation requiring actions or inactions that are reasonably necessary in order to (i) comply with the ERO’s Reliability Standards, (ii) preserve public health and safety, (iii) limit or prevent damage, or (iv) expedite restoration of service.

“Energy” means the amount of electricity either used or generated over a period of time, expressed in terms of kilowatt-hour (kWh) or megawatt-hour (MWh).

“Environmental Attributes” means all attributes (environmental or other) that are created or otherwise arise from the Facility’s generation of electricity from a renewable energy source in contrast with the generation of electricity using nuclear or fossil fuels or other non-renewable resources. Forms of such attributes include, without limitation, any and all environmental air quality credits, green credits, renewable energy certificates (“RECs”), carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, solar renewable energy credits, tags, certificates or similar products or rights associated with solar as a “green” or “renewable” electric generation resource, or similar products or rights, howsoever entitled, (i) resulting from the avoidance or reduction of the emission of any gas, chemical or other substance, including but not limited to, mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water, or soil, and (ii) attributable to the generation, purchase, sale or use of Energy from or by the Facility, or otherwise attributable to the Facility during the Term. Environmental Attributes include, without limitation, those currently existing or arising during the Term under local, state, regional, federal, or international law or regulation relevant to the avoidance of any emission described in this Agreement under any governmental, regulatory or voluntary program, including, but not limited to, the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator (collectively with any local, state, regional, or federal entity given jurisdiction over a program involving transferability of Environmental Attributes). Notwithstanding the foregoing, the term

Environmental Attributes shall exclude any and all state and federal production tax credits, any investment tax credits, tax incentives, or tax grants, and any other tax credits, tax incentives or tax grants which are or will be generated or earned by the Facility.

“Environmental Liability” means all loss, damage, expense, liability and other claims, including court costs and reasonable attorney fees arising out of or relating to the existence at, on, above, below or near the Facility of any Hazardous Substance.

“ERO” means the North American Electric Reliability Corporation and its successor, if any.

“Facility” means all equipment, as described in Attachment A, used to produce electric energy and all equipment that is owned or controlled by Seller required for parallel operation with the Transmission System. In the case of a cogenerator, the Facility includes all equipment that is owned or controlled by the Seller to produce useful thermal energy through the sequential use of energy.

“Facility Rating” means the output potential the Facility can produce under specified conditions, which is generally expressed in kW or MW.

“Financial Closing” means the fulfillment of each of the following conditions:

- (a) the execution and delivery of the Financing Documents; and
- (b) all conditions precedent to the initial availability for disbursement of funds under the Financing Documents (other than relating to the effectiveness of this Agreement) are satisfied or waived.

“Financing Documents” means documentation with respect to any private equity investment in Seller, any loan agreements (including agreements for any subordinated debt), notes, bonds, indentures, guarantees, security agreements and hedging agreements relating to the financing or refinancing of the design, development, construction, testing, commissioning, operation and maintenance of the Facility or any guarantee by any Financing Party or the repayment of all or any portion of such financing or refinancing.

“Financing Party” means the Persons (including any trustee or agent on behalf of such Persons) providing financing or refinancing to or on behalf of Seller for the design, development, construction, testing, commissioning, operation or maintenance of the Facility (whether limited recourse, or with or without recourse).

“Good Utility Practice” means any of the practices, methods, standards and acts, (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of owners and operators of power plants in the United States that have the technology, complexity and size similar to the Facility) that, at a particular time in the

exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result and goals (including such goals as efficiency, reliability, economy and profitability) in a manner consistent with applicable facility design limits and equipment specifications and applicable laws and regulations. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be generally accepted and consistently adhered to acceptable practices, methods or acts relevant to the activity and facts in question.

“Government Agency” means the United States of America, or any state or any political subdivision thereof, including without limitation, any municipality, township or county, and any domestic entity exercising executive, legislative, judicial, regulatory, administrative functions of or pertaining to government, including, without limitation, any corporation or other entity owned or controlled by any of the foregoing.

“Hazardous Substance” means any chemical, waste, or other substance (i) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to environmental health, safety or welfare, (ii) which is declared to be hazardous, toxic, or polluting by any Government Agency, (iii) exposure to which is now or hereafter prohibited, limited or regulated by any Government Agency, (iv) the storage, use, handling, disposal or release of which is restricted or regulated by any Government Agency, or (v) for which remediation or cleanup is required by any Government Agency.

“Interconnection Facilities” means all facilities and equipment between the Facility and the Delivery Point, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Facility to the Transmission System.

“Net Energy” means, for the period being considered, the actual total amount of Energy generated by the Facility less any Energy generated by the Facility that is consumed for the operation of the Facility, as measured according to the metering provisions in Article 8.

“Net Energy Rate” has the meaning assigned to it in Attachment B.

“Permit” means all state, federal and local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, operation and maintenance of the Facility.

“Person” means an individual, partnership, corporation, association, joint stock company, trust, joint venture, unincorporated organization, or Governmental Agency (or any department, agency, or political subdivision thereof).

“Project Consents” means the following Consents, each of which is necessary to Seller for the fulfillment of Seller’s obligations hereunder:

(a) the Authorization to Construct;

(b) planning permission and consents in respect of the Facility, and any electricity substation located at the Facility site, including but not limited to, a prevention of significant deterioration permit, a noise, proximity and visual impact permit, and any required zoning permit; and

(c) any integrated pollution control license.

“Project Contracts” means this Agreement, and any other contract required to construct, operate and maintain the Facility. The Project Contracts may include, but are not limited to, the turnkey engineering, procurement and construction contract, the electric transmission interconnection agreement and transmission operating agreement, the fuel supply agreement, the facility site lease, and the operation and maintenance agreement.

“Qualifying Facility” or “QF” means a cogenerator, small power producer, or non-utility generator that has been certified or self-certified by the Federal Energy Regulatory Commission (“FERC”) as meeting certain ownership, operating and efficiency criteria established by the FERC pursuant to the Public Utility Regulatory Policies Act of 1978 (“PURPA”), the criteria for which are currently set forth in 18 C.F.R. § 292, *et seq.* (2006, Section 210 of PURPA, 16 U.S.C. § 824a-3 (2005), 16 U.S.C. 796, *et seq.* (2006), and Section 1253 of EPCA 2005, Pub. L. No. 109-58, § 1253, 119 Stat. 594 (2005) or, alternatively, analogous provisions under the laws of the State of South Carolina.

“Test Energy” means any Net Energy generated by the Facility and delivered to the Delivery Point prior to the Commercial Operation Date of the Facility.

“Transmission System” means SCE&G’s system of electric lines comprised wholly or substantially of high voltage lines, associated system protection, system stabilization, voltage transformation, and capacitance, reactance and other electric plant used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another, or to or from the Delivery Point or to ultimate consumers and shall include any interconnection owned by SCE&G, but shall in no event include any lines that SCE&G has specified to be part of the Distribution System except for any distribution facilities required to accept Net Energy from the Facility.

ARTICLE II

FACILITY DESCRIPTION AND QUALIFYING FACILITY STATUS

- 2.1 Facility Description and Generation Capabilities. A detailed description of the Facility, including, *inter alia*, its specific location, generator type (induction or synchronous), technology, fuel type and source, generator rating (KVA), maximum capability (MW), net output (MW), power factor (%), and operating voltage (kV) is set out in Attachment A.
- 2.2 Facility Specifications. Seller, at its sole expense, will design, construct, maintain, provide security for, operate and repair the Facility (a) according to Good Utility Practice; and (b) to meet the requirements of this Agreement.
- 2.3 Maintenance of Facility's Status. Seller shall use the same fuel or energy source and maintain the status as a Qualifying Facility throughout the Term of this Agreement. Seller shall at all times keep Buyer informed of any material changes in its business that affects its Qualifying Facility status. Buyer shall have the right, upon reasonable notice of not less than seven (7) Business Days, to inspect the Facility and to examine any books, records, or other documents reasonably deemed necessary to verify compliance with this Agreement. In the event of an Emergency impacting Buyer's system that occurs at or near the Facility, Buyer shall make reasonable efforts to notify the Facility and make arrangements for an emergency inspection. On or before March 31 of each year during the Term of this Agreement, Seller shall provide Buyer a certificate signed by an officer of Seller certifying that the Facility continuously maintained its status as a Qualifying Facility during the prior Calendar Year.

ARTICLE III

TERM, PURCHASE AND SALE, ENVIRONMENTAL ATTRIBUTES

- 3.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue unless otherwise terminated in accordance with its terms until the end of the fifteenth (15th) year after the Commercial Operation Date (the "Term"). Subject to Article 3.4, Buyer's obligation to purchase and Seller's obligation to sell the Net Energy created by the Facility as set forth herein shall be effective when the Facility generates Test Energy.
- 3.2 Purchase and Sale. Buyer agrees to purchase the entire Net Energy of the Facility during the Term and to accept delivery of the Net Energy at the Delivery Point during the Term, subject to the terms of this Agreement. Seller agrees to sell to Buyer the entire Net Energy of the Facility during the Term. The Net Energy will be provided on an "as available" basis. Seller shall not contract to sell any Net Energy from the Facility to any Person other than Buyer at any time during the Term, and Seller acknowledges that Buyer is entitled to

receive all Net Energy from the Facility during the Term. Title to and risk of loss for the Net Energy shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Net Energy at the Delivery Point free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person.

3.3 Net Energy Rate. Buyer shall pay Seller for the Net Energy delivered to Buyer at the Net Energy Rate for the applicable period in which service is provided as set forth in Attachment B. Buyer shall purchase all Test Energy produced by the Facility during startup and testing at the Net Energy Rate. Seller and Buyer agree that the applicable Net Energy Rate is intended to compensate Seller for the all electrical output of the Facility delivered to Buyer.

3.4 Generator Interconnection and Transmission Service. The Seller shall enter into the necessary agreements for generator interconnection and transmission service, as required, with SCE&G Transmission, and the Seller shall make any and all transmission-related arrangements (including interconnection and ancillary services) between the Seller and SCE&G Transmission for delivery of the Facility's Net Energy to the Delivery Point. The Net Energy Rate does not include transmission losses. Seller is responsible for any transmission losses that occur prior to the Delivery Point.

3.5 Curtailable or Standby Service. Seller shall not rely on interruptible or curtailable standby service for the start-up requirements (initial or otherwise) of the Facility.

3.6 Facility Accreditation. Seller agrees to cooperate with Buyer in taking such reasonable actions as are necessary for Buyer to obtain accreditation of the Facility to the maximum extent practicable, in order to permit Buyer to (a) count such Facility in connection with satisfying applicable resource adequacy requirements, and (b) designate this Agreement as a designated network resource under the terms of SCE&G's Open Access Transmission Tariff, provided however, that this provision shall not impose on Seller any obligation to incur costs associated with such cooperation.

3.7 Environmental Attributes and Federal Tax Incentives. All Environmental Attributes at any time allocated to the Facility and/or associated with Net Energy produced from the Facility shall remain with and be the sole property of the Seller, absent exercise by Buyer of its rights to purchase Environmental Attributes pursuant to Section 3.9. Seller shall retain any and all state and federal production tax credits, any investment tax credits, tax incentives, or tax grants, and any other tax credits, tax incentives or tax grants which are or will be generated by the Facility.

3.8 Environmental Attribute Accreditation. Buyer agrees to cooperate with Seller in taking such reasonable actions as are necessary to obtain accreditation of Environmental Attributes associated with the Facility to the maximum extent practicable, provided

however, that this provision shall not impose upon Buyer any obligation to incur costs associated with such cooperation. If Buyer exercises its option under Section 3.9, then Seller shall cooperate with Buyer in the same manner to obtain such accreditation.

3.9 Purchase of Environmental Attributes.

(a) Buyer shall have a right of first refusal to purchase Environmental Attributes from the Project as set forth in this Section 3.9. Seller shall provide to Buyer written notice of each bona fide offer to purchase Environmental Attributes from the Project at least thirty (30) days prior to entering into any such sale agreement. Such notice shall contain the expected date of execution of such sale agreement, and the operative terms and conditions of the sale of the Environmental Attributes from the Facility (including the quantity, price and duration of the proposed sale) that the Seller desires to accept. The terms and conditions of any such written offer shall be treated as confidential.

(b) Buyer shall provide written notice to Seller within ten (10) Business Days after receipt of Seller's notice of intent to sell if Buyer intends to exercise its right of first refusal to purchase the Environmental Attributes pursuant to the terms and conditions described in subsection (a).

(c) If Seller has not received Buyer's notice to exercise its right of first refusal by 5:00 pm local time (at Seller's location for receiving notices) on the tenth (10th) Business Day, Seller shall be free to sell the Environmental Attributes upon the terms and conditions stated in its notice of the bona fide written offer.

ARTICLE IV

CONDITIONS PRECEDENT

4.1 Conditions Precedent. Prior to Buyer's obligation to accept Test Energy and Net Energy, Seller shall satisfy the following Conditions Precedent:

(a) Seller shall have entered into the necessary agreement for generator interconnection, as required, to deliver Net Energy from the Facility to the Delivery Point and all Interconnection Facilities shall have been constructed and installed;

(b) Seller shall have obtained the Project Consents and any other consents for which it is responsible under the terms hereof in a form and substance satisfactory to Seller in its reasonable discretion;

(c) Seller shall have entered into Financing Documents relative to the construction of the Facility and achieved Financial Closing in a form and substance satisfactory to Seller in its reasonable discretion;

(d) Seller shall have obtained a retail electric service agreement, as required, to supply station service to the Facility;

(e) Seller shall have entered into the Project Contracts in a form and substance satisfactory to Seller in its reasonable discretion;

(f) Seller shall have obtained insurance policies or coverage in compliance with Article X.

(g) Seller shall have obtained Qualifying Facility Status from the Federal Energy Regulatory Commission.

4.2 Reasonable Efforts, Notice of Satisfaction, Termination. Seller shall use commercially reasonable efforts to satisfy each condition precedent set forth in Section 4.1. Promptly upon satisfaction (or waiver in writing) of each condition precedent set forth in Sections 4.1, Seller shall deliver to Buyer a written acknowledgment that such condition is satisfied and specify in that acknowledgment the date of satisfaction. This Agreement may be terminated by either Party prior to the expiration of the Term, upon ten (10) days notice of termination, in the event that Seller fails to satisfy any condition precedent by November 1, 2017.

4.3 Consequences of Termination. Neither Party shall have any liability to the other Party arising out of or following any termination under Section 4.2, however, such termination shall not relieve either Party from any liability that may exist as of the time of termination.

ARTICLE V

SELLER'S OBLIGATIONS

5.1 Design, Construction and Operation of the Facility. Seller shall:

(a) At its sole expense, design and construct the Facility and all related facilities in accordance with Good Utility Practice.

(b) Seek, obtain, maintain, comply with and, as necessary, renew, and modify from time to time, at Seller's sole expense, the Permits and all other permits, certificates or other authorizations which are required by any applicable laws or Government Agencies as prerequisites to engaging in the sale of Net Energy at the Delivery Point as envisioned by

the Agreement and to meeting Seller's obligation to operate the Facility consistently with the terms of the Agreement.

(c) At Seller's sole expense, operate and maintain, provide security for and repair the Facility in accordance with this Agreement and Good Utility Practice.

(d) At Seller's sole expense, obtain and maintain policies of general liability insurance in accordance with Article X. Seller shall furnish Buyer certificates of insurance prior to starting work at the site.

(e) Comply with all directives of SCE&G Transmission pursuant to the applicable agreements for generator interconnection and transmission service, and cooperate with all reasonable requests by Buyer relating to Buyer's compliance with any such directives relating to deliveries of Net Energy from the Facility. The Parties recognize that Seller's compliance with any such directives of SCE&G Transmission due to conditions on Buyer's Distribution System that require curtailment or interruption of Net Energy deliveries may result in reduced sales hereunder, without liability on the part of either Party.

(f) Allow Buyer reasonable access to the Facility, subject to reasonable advance notice from Buyer to Seller and Buyer's compliance with Seller's safety and security measures.

5.2 General Obligations.

(a) Seller, during the Term of the Agreement, shall pay all present or future federal, state, municipal, or other lawful taxes or fees applicable to Seller, or the Facility, or by reason of the sale of Net Energy by Seller to the Buyer up to the Delivery Point under the Agreement.

(b) Seller shall obtain in its own name and at its own expense any and all pollution or environmental credits or offsets necessary to operate the Facility in compliance with Environmental Laws.

(c) Seller shall purchase from Buyer all station auxiliary power and energy used by the Facility and not provided by the Facility itself.

(d) Seller shall continue to (i) preserve, renew and keep in full force and effect, to the extent applicable, its organizational existence and good standing, and take all reasonable action to maintain all Permits, rights, privileges, licenses, and franchises necessary or desirable in the ordinary course of its business; (ii) comply with all applicable laws, and (iii) comply with all material agreements, instruments and undertakings related to the Facility, except to the extent that any failure to so comply has not had, or is not

PUBLIC VERSION

reasonably likely to have, a material adverse effect on Seller's performance of its material obligations under this Agreement.

(e) Seller shall make available for Buyer's review such other nonproprietary information in its possession, custody or control regarding the permitting, engineering, construction, condition and operations of the Facility, as Buyer may, from time to time, reasonably request.

(f) Seller shall indemnify, defend, and hold Buyer harmless from and against all Environmental Liability, but only to the extent arising from the activities of Seller and its officers, employees, contractors, subcontractors and agents at the Facility, or from events, substances or conditions first occurring or existing at the Facility while Seller is in possession of the Facility; provided that Buyer shall indemnify, defend, and hold Seller harmless against, any Environmental Liability but only to the extent resulting from the negligence or intentional misconduct of Buyer or any of its officers, employees, agents, contractors or subcontractors while at the Facility.

(g) Seller shall indemnify, defend and hold Buyer harmless from and against all losses, liabilities or claims, including reasonable attorneys' fees and court costs, of any and all persons for personal injury (including death) or property damage arising from or out of the operation of the Facility.

(h) Interconnection. The Facility shall be interconnected with SCE&G's Transmission System in accordance with the requirements for generator interconnection pursuant to SCE&G's Open Access Transmission Tariff.

ARTICLE VI

BUYER'S OBLIGATIONS

6.1 Distribution and Transmission Service. Buyer shall, at its expense, be responsible for obtaining service over the Distribution and/or Transmission Systems to the extent such service is necessary for delivery of the Net Energy of the Facility from the Delivery Point. Buyer shall provide Seller written notice that all essential facilities within Buyer's control are in place and operational prior to the Buyer's receipt of Test Energy.

6.2 Cooperation. Buyer agrees to cooperate with Seller in any applications for Permits, certificates or other authorizations as described in Section 5.1 (b). Buyer's obligation under this section shall consist only of providing nonproprietary information in its

possession, custody or control necessary to complete any applications and responding to requests from the relevant Governmental Authorities or other Persons.

ARTICLE VII

ELECTRICITY PRODUCTION, PLANT MAINTENANCE, DISPATCH AND CONTROL

7.1 Generation Estimates and Plant Maintenance. No later than sixty (60) calendar days prior to the projected Commercial Operation Date, and prior to October 1 of each Calendar Year thereafter during the Term, the Seller shall submit to Buyer in writing a good faith estimate of the amount of electricity to be generated by the Facility and delivered to Buyer for each month of the following Calendar Year, including the time, duration and magnitude of any scheduled maintenance period(s) or reductions in Net Energy to be delivered to Buyer. Seller agrees to provide updates to its planned maintenance periods as they become known. The Parties agree to discuss coordinating scheduled maintenance schedules. By October 31 of each Calendar Year, Buyer shall notify Seller in writing whether Seller's planned maintenance schedule is acceptable. If Buyer does not accept a particular planned maintenance period scheduled by Seller, Buyer shall advise Seller of the time period closest to the planned period when the outage can be scheduled. The Seller shall schedule outages only during periods approved by Buyer, and such approval shall not be unreasonably withheld. Once the schedule for the maintenance plan has been established and approved, either Party requesting a subsequent change in such schedule, except when the change is due to Force Majeure, must obtain approval for such change from the other Party. Such approval shall not be unreasonably withheld or delayed. Scheduled maintenance outage days shall be limited to twenty-eight (28) days per Calendar Year. In no event shall maintenance periods be scheduled during the following periods: June 1 through September 30 and December 1 through and including the last day of February.

7.2 Communication. The Seller shall comply with reasonable requests by Buyer regarding day-to-day and hour-by-hour communication between the Parties relative to electricity production and maintenance scheduling.

7.3 Dispatch. Power supplied by Seller at the Delivery Point hereunder shall be in the form of three-phase 60 hertz alternating current, at a nominal voltage of 23 kV, and a power factor dispatchable and controllable in the range of 95% lagging to 95% leading as measured at the Delivery Point to maintain system operating parameters, including power factor, as specified from time to time by Buyer.

7.4 Seller's Plant Personnel. During the Term, Seller shall employ qualified personnel for managing, operating and maintaining the Facility and for coordinating with Buyer. The

Seller shall ensure that operating personnel are available at all times, twenty-four (24) hours per calendar day and seven (7) calendar days per week. Additionally, during the Term, Seller shall operate and maintain the Facility in such manner as to ensure compliance with its obligations hereunder and in accordance with applicable law and Good Utility Practice.

ARTICLE VIII

METERING

8.1 Metering Equipment. The Net Energy delivered to Buyer shall be derived from data measured by the meter(s) and associated telecommunications equipment installed at the Delivery Point by SCE&G Transmission ("Buyer's meter(s)") pursuant to any agreement between SCE&G Transmission and Seller for generator interconnection of the Facility. Seller shall authorize SCE&G Transmission to provide meter data to Buyer. Except as provided in Sections 8.2 and 8.3, Buyer's meter(s) shall be used for quantity measurements and billing under this Agreement. Seller, at its sole expense, may install and maintain check meters and all associated measuring equipment necessary to permit an accurate determination of the quantities of Net Energy delivered under this Agreement; provided, however, that such equipment shall be operated and maintained in a manner that does not interfere with the installation, maintenance, and operation of Buyer's meter(s).

8.2 Measurements. Readings of Buyer's meter(s) made by Buyer shall be conclusive as to the amount of Net Energy delivered to Buyer hereunder; provided, however, that if Buyer's meter(s) is out of service or is determined, pursuant to Section 8.3 hereof, to be registering inaccurately, measurement of Net Energy delivered hereunder shall be determined by, in the following order:

- (a) Seller's check meter, if installed, annually tested and registering accurately; or
- (b) in the absence of an installed, annually tested and accurately registering check meter belonging to Seller, making a mathematical calculation if, upon a calibration test of Buyer's meter, a percentage error is ascertainable;
- (c) in the absence of an installed, annually tested and properly registering check meter belonging to the Seller, and an ascertainable percentage of error in Buyer's meter, estimating by reference to quantities measured during periods of similar conditions when Buyer's meter was registering accurately; or
- (d) If no reliable information exists as to the period over which Buyer's meter was registering inaccurately, it shall be assumed for correction purposes hereunder that such

inaccuracy began at a point in time midway between the testing date and the last previous date on which such meter was tested and found to be accurate; provided, however, that the deemed period of the inaccuracy shall not exceed one hundred eighty (180) days.

8.3 Testing and Correction. The accuracy of Buyer's meter(s) shall be tested and verified by Buyer annually. Buyer shall have the right, at its own expense, to test and verify the Seller's meter(s) upon reasonable notice, provided such testing shall not exceed one test during a Calendar Year, or more frequently if there is just cause. If Seller has installed check meters in accordance with Section 8.1 hereof, Seller shall test and verify such meters annually. Each Party shall bear the cost of the annual testing of its own meters.

(a) If either Party disputes a meter's accuracy or condition, it shall so advise the meter's owner in writing. The meter's owner shall, within fifteen (15) days after receiving such notice, advise the other Party in writing as to its position concerning the meter's accuracy and reasons for taking such position. If the Parties are unable to resolve their disagreement through reasonable negotiations, either Party may submit such dispute to an unaffiliated third-party engineering company mutually acceptable to the Parties to test the meter.

(b) Should the meter be found to be registering within a one-percent variance, the Party contesting the meter's accuracy shall bear the cost of inspection; otherwise, the cost shall be borne by the meter's owner. Any repair or replacement of such a meter found to be operating beyond permitted one-percent variance shall be made at the expense of the owner of that meter as soon as practicable, based on the third-party engineer's report. If, upon testing, any meter is found to be in error by an amount greater than a one-percent variance, such meter shall be replaced promptly, any previous recordings by such meter shall be adjusted in accordance with Section 8.2, any prior payments made for Net Energy and/or invoices for payments not yet made shall be adjusted to reflect the corrected measurements determined pursuant to Section 8.2. If the difference of the payments actually made by Buyer minus the payment based upon the corrected measurements is a positive number, Seller shall pay the difference to Buyer; if the difference is a negative number, Buyer shall pay the difference to Seller. In either case, the Party paying such difference shall also pay interest as described in Section 9.1(d) for late payments and such payment (including such interest) shall be made within ten (10) days of receipt of a corrected billing statement.

8.4 Maintenance and Records. Each Party has the right to be present whenever the other Party tests and/or calibrates the equipment used in measuring or checking the measurement of the Net Energy delivered hereunder. Each Party shall endeavor to give notice of five (5) days, but in no event less than forty-eight (48) hours, to the other Party in advance of taking any such actions. The records from the measuring equipment remain the

property of Seller or Buyer, respectively, but, upon request, each Party will provide access to the other, upon reasonable notice and during normal business hours, to review the Party's metering and billing and maintenance records, including supporting documentation, necessary to verify the accuracy of bills. Each Party is permitted to audit such records of the other Party no more frequently than once each Calendar Year.

ARTICLE IX

BILLING AND PAYMENT

9.1 Billing and Payment.

(a) Buyer shall read the meter or cause the meter to be read as soon as practicable after the last day of the previous calendar month and shall report such reading for the Net Energy delivered for the previous calendar month to the Seller.

(b) Seller shall create and send an invoice to the Buyer based on Buyer's meter readings.

(c) Buyer's payment to Seller for Net Energy received shall be paid by electronic funds transfer by the twentieth (20th) of each month or ten (10) days following Buyer's receipt of Seller's invoice, whichever is later. If such date falls on a weekend or legal holiday, the due date shall be the next Business Day.

(d) Payments made after the due date shall be considered late and shall bear interest on the unpaid balance at a rate equal to an annual rate of two percent (2%) calculated daily plus the average daily prime rate as determined from the "Money Rates" section of the Wall Street Journal, for the days of the late payment period multiplied by the number of days elapsed from and including the due date, to but excluding the payment date. In the event this index is discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index.

(e) If either Party hereto shall find at any time within one year after the date of any payment hereunder that there has been an overcharge or undercharge, the Party finding the error shall promptly notify the other Party in writing. In the event of an undercharge, Buyer shall pay the amount due within thirty (30) days of the date of the notice of error. In the event of an overcharge, Seller shall refund the overpayment within thirty (30) days of the notice of error.

(f) Each Party shall have the right, at its sole expense during normal business hours, to examine the other Party's records, but only after prior notice and only to the extent necessary to verify the accuracy of any statement, charge, notice, or computation made hereunder.

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9.2 Set-Off. Buyer may at any time, but shall be under no obligation to, set off or recoup any and all sums due from Seller against sums due to the Seller hereunder without undergoing any legal process, but with prior written notice to Seller.

ARTICLE X

INSURANCE

10.1 Policy Type. The Seller will procure or cause to be procured and will maintain throughout the entire Term of this Agreement, a policy or policies of liability insurance issued by an insurer acceptable to Buyer on a standard "Insurance Services Office" commercial general liability form (such policy or policies, collectively, the "Seller's Insurance"). A certificate of insurance shall be delivered to Buyer at least fifteen (15) calendar days prior to the start of any work at the Facility. At a minimum, Seller's Insurance shall contain (a) an endorsement providing coverage, including products liability/completed operations coverage for the Term of this Agreement, and (b) a broad form contractual liability endorsement covering liabilities (i) that might arise under this Agreement or (ii) caused by operation of the Facility or any of Seller's equipment in satisfactory and safe operating condition. Without limiting the foregoing, Seller's Insurance must be reasonably acceptable to Buyer. Any premium assessment or deductible shall be for the account of Seller and not Buyer.

10.2 Policy Minimum Limits. Seller's Insurance shall have a minimum limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, combined single limit, for bodily injury (including death) or property damage.

10.3 Policy Effective Date. To the extent that Seller's Insurance is on a "claims made" basis, the retroactive date of the policy(ies) shall be the Effective Date of this Agreement or such other date as may be agreed upon to protect the interests of Seller and Buyer. Furthermore, to the extent that Seller's Insurance is on a "claims made" basis, the Seller's duty to provide insurance coverage shall survive the termination of this Agreement until the expiration of the maximum statutory period of limitations in the State of South Carolina for actions based in contract or in tort. To the extent the Seller's Insurance is on an "occurrence" basis, such insurance shall be maintained in effect at all times by the Seller during the Term of this Agreement.

10.4 Policy Cancellation or Alteration. Seller's Insurance shall provide that it may not be cancelled or materially altered without at least thirty (30) calendar days' written notice to Buyer. The Seller shall provide Buyer with a copy of any material communication or notice

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related to the Seller's Insurance within ten (10) Business Days of the Seller's receipt or issuance thereof.

10.5 Additional Insured. The Seller shall be designated as the named insured and Buyer shall be designated as an additional insured under the Seller's Insurance. The Seller's Insurance shall be endorsed to be primary to any coverage maintained by Buyer.

ARTICLE XI

FORCE MAJEURE

11.1 Force Majeure. Force Majeure is defined as an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and not caused by the negligence or lack of due diligence of the Party claiming Force Majeure or that Party's contractors or suppliers, and adversely affects the performance by that Party of its obligations under or pursuant to this Agreement. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, explosions and fires not originating in the Facility or caused by its operation, hurricanes, floods, strikes, lockouts or other labor disputes or difficulties (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). However, the obligation to use reasonable diligence shall not be interpreted to require resolution of labor disputes by acceding to demands when such course is inadvisable in the discretion of the Party having such difficulty. Payment of money shall not be excused by Force Majeure.

11.2 Remedial Action. A Party shall not be liable to the other Party to the extent the first Party is prevented from performing its obligations due to an event of Force Majeure. The Party rendered unable to fulfill any obligation by reason of a Force Majeure shall take all reasonable actions necessary to remove such inability with all due speed and diligence. Such partially performing or nonperforming Party shall be prompt and diligent in attempting to remove the cause of its failure to perform. Neither Party shall be required to remedy, in whole or in part, an event of Force Majeure if such remedy is inconsistent with Good Utility Practices.

11.3 Exclusions from Definition of Force Majeure. Notwithstanding anything in the Agreement to the contrary, "Force Majeure" shall not mean:

(a) Inclement weather affecting construction, start-up, or operation of the Facility or related facilities that does not otherwise meet the definition of "Force Majeure."

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(b) Changes in market conditions or governmental action that affect Buyer or Seller, as applicable, the cost of Seller's supply of Net Energy from the Facility, or the ability of Buyer to obtain energy at a rate lower than the Net Energy Rate.

(c) Equipment breakdown or inability to use equipment caused by its design, construction, operation, maintenance or inability to meet regulatory standards, or otherwise caused by an event originating in the control of a Party.

(d) Unavailability of equipment, repairs or spare parts for the Facility, except to the extent due to a qualifying event of Force Majeure.

(e) Failure to obtain on a timely basis and maintain a necessary Permit or other regulatory approval or any undue delay in obtaining, maintaining, or renewing any Permit, in either case, due to Seller's failure to diligently pursue obtaining, maintaining or renewing such Permit.

(f) Scheduled maintenance on the distribution system.

11.4 Notice. In the event of any delay or nonperformance resulting from Force Majeure, the Party suffering the event of Force Majeure shall, as soon as practicable after the occurrence of the Force Majeure event, notify the other Party in writing of the nature, cause, date of commencement thereof, and the anticipated extent of any delay or interruption in performance.

ARTICLE XII

DEFAULT, TERMINATION, REMEDIES

12.1 Events of Default. The following shall each constitute an Event of Default:

(a) a Party fails to make when due, any payment required pursuant to this Agreement;

(b) any of the representations, warranties or covenants made by a Party in this Agreement is false or misleading in any material respect, and is not cured within the applicable Cure Period;

(c) a Party, or the entity that controls or owns a Party, ceases the conduct of active business; or if proceedings under the federal bankruptcy law or insolvency laws shall be instituted by or for or against a Party or the entity that controls or owns a Party; or if a receiver shall be appointed for a Party or any of the Party's assets or properties, or for the entity that controls or owns a Party; or if any part of a Party's assets shall be attached, levied upon, encumbered, pledged, seized or taken under any judicial process, and such proceedings shall not be vacated or fully stayed within thirty (30) calendar days thereof; or

if a Party shall make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts as they become due; or

(d) a Party breaches any material provision of the Agreement not specifically enumerated in this Section 12.1, and such breach is not cured within the applicable Cure Period; provided, however, there is no Cure Period for breaches of the provisions of Sections 2.3, and 5.1 (b).

(e) Any defaulting Party shall have the following cure periods to accomplish the cure of any breach before it becomes an Event Default (the "Cure Period"):

(i) For breach of a monetary obligation: ten (10) days following receipt of written notice that a payment is due unless such payment is contested pursuant to Section 15.2 below; and

(ii) For breach of a nonmonetary obligation: thirty (30) days following receipt of written notice of such breach; provided, that such defaulting Party shall have an additional period of time to cure such nonmonetary breach so long as the defaulting Party is making a good faith effort to cure the breach, the total cure period not to exceed sixty (60) days in the aggregate.

(f) Each Party agrees to accept the cure of a breach by a defaulting Party offered by a Financing Party who has provided financing to such defaulting Party, subject to the limitations of the Cure Periods set forth above.

(g) An Event of Default shall not have occurred hereunder until the proper notice has been given and the applicable Cure Period has expired without the breach being cured.

12.2 Termination.

(a) In the event the defaulting Party fails to cure the Event of Default within the period for curative action under Section 12.1, the non-defaulting Party may terminate the Agreement by notifying the defaulting Party in writing of the decision to terminate and the effective date of the termination; provided, however, that the non-defaulting Party shall not be entitled to terminate this Agreement in the case of an Event of Default that is not reasonably capable of being cured within the applicable cure period, if the defaulting Party (i) has commenced to cure the default within such applicable cure period, (ii) is diligently pursuing such cure, (iii) such Event of Default is capable of being cured by the defaulting Party within a reasonable time after the expiration of such cure period, and (iv) such Event of Default is in fact cured within such reasonable period of time; provided, further, that the

extended cure period provided for in this Section 12.2 shall in no case be for longer than one month after the date of expiration of the original cure period set out in Section 12.1.

(b) Upon termination of the Agreement by Buyer due to an Event of Default by Seller, Buyer shall have no future or further obligation to purchase the Net Energy of the Facility from Seller or to satisfy any other obligation under this Agreement, except for payments or other obligations arising or accruing prior to the effective date of termination.

(c) Upon termination of the Agreement by Seller due to an Event of Default by Buyer, Seller shall have no future or further obligation to deliver the Net Energy of the Project to Buyer or to satisfy any other obligation under this Agreement, except for payments or other obligations arising or accruing prior to the effective date of termination.

12.3 Other Damages. Neither Party shall be liable to the other Party for special, incidental, exemplary, indirect or consequential damages whether the claim arises in tort, contract, or otherwise as a result of this Agreement or the breach of this Agreement. For all other claims, causes of action and damages the Parties shall be entitled to the recovery of actual damages allowed by law unless otherwise limited by this Agreement. Except as provided herein, neither the enumeration of Events of Default in Section 12.1 nor the termination of this Agreement by a non-defaulting Party pursuant to Section 12.2 shall limit the right of a non-defaulting Party to rights and remedies available at law, including, but not limited to, claims for breach of contract or failure to perform by the other Party.

ARTICLE XIII

INDEMNIFICATION

13.1 General. Buyer and Seller shall each be responsible for its own facilities. Buyer and Seller shall each be responsible for ensuring adequate safeguards for other of Buyer's customers, Buyer's and Seller's personnel and equipment and for the protection of its own generating system. Each Party (the "Indemnifying Party") agrees, to the extent permitted by applicable law, to indemnify, pay, defend and hold harmless the other Party (the "Indemnified Party") and its officers, directors, employees, agents and contractors (hereinafter called respectively, "Seller Entities" and "Buyer Entities") from and against any and all claims, demands, costs or expenses for loss, damage, or injury to persons or property of the Indemnified Party (or to third parties) directly caused by, arising out of, or resulting from:

(a) a breach by the Indemnifying Party of its covenants, representations and warranties or obligations thereunder;

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(b) any act or omission by the Indemnifying Party or its contractors, agents, servants or employees in connection with the installation or operation of its generating system or the operation thereof in connection with the other Party's system;

(c) any defect in, failure of, or fault related to, the Indemnifying Party's generating system;

(d) the negligence or willful misconduct of the Indemnifying Party or its contractors, agents, servants or employees; or

(e) any other event or act that is the result of, or proximately caused by, the Indemnifying Party or its contractors, agents, servants or employees related to this Agreement or such Party's performance hereunder.

13.2 Claims Settlement. Payment by an Indemnified Party to a third party shall not be a condition precedent to the obligations of the Indemnifying Party under this Article XIII. No Indemnified Party under this Article XIII shall settle any claim for which it claims indemnification hereunder without first allowing the Indemnifying Party the right to defend such claim. The Indemnifying Party shall have no obligations under Article XIII in the event of a breach of the foregoing sentence by the Indemnified Party. Article XIII shall survive termination of this Agreement.

ARTICLE XIV

REPRESENTATIONS, WARRANTIES, COVENANTS

14.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that, as of the Effective Date:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or incorporation;

(b) it has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary corporate, company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations;

(c) its execution and delivery of this Agreement and its performance of its obligations under this Agreement do not violate or conflict with any law applicable to it; with any provision of its charter or bylaws (or comparable constituent documents); with any order or judgment of any court or other agency of government applicable to it or any of its assets; or with any contractual restriction binding on or affecting it or any of its assets;

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(d) there are no actions, suits, proceedings or investigations pending or, to the knowledge of the Party, threatened against it at law or in equity before any court or tribunal of the United States or any other jurisdiction that individually or in the aggregate could result in any materially adverse effect on the Party's business, properties, or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under this Agreement;

(e) all authorizations of and exemptions, actions or approvals by, and all notices to or filings with, any governmental authority that are required to have been obtained or made by it at the time this representation is made with respect to this Agreement have been obtained or made and are in full force and effect, and all conditions of any such authorizations, exemptions, actions or approvals have been complied with;

(f) the Party has knowledge of all laws and business practices that must be followed in performing its obligations under this Agreement and the Party is in compliance with all such laws and business practices except to the extent that failure to comply therewith would not, in the aggregate, have a material adverse effect on the other Party;

(g) this Agreement constitutes the Party's legal, valid and binding obligation, enforceable against it in accordance with its terms; and

(h) the Party covenants that, with the exception of (d) above, it will cause these representations and warranties to be true and correct throughout the Term of the Agreement.

14.2 Seller's Representations and Warranties. Seller represents and warrants to the Buyer that, as of Financial Closing, the Seller knows of no (i) existing violations of any environmental laws at the Facility, including those governing Hazardous Substances or (ii) pending, ongoing, or unresolved administrative or enforcement investigations, compliance orders, claims, demands, actions, or other litigation brought by a Government Agency(ies) or other third parties alleging violations of any environmental law or permit that would materially and adversely affect the operation of the Facility as contemplated by this Agreement.

ARTICLE XV

DISPUTE RESOLUTION

15.1 General. It is the intent of the Parties that all breaches of this Agreement or disputes arising out of this Agreement shall be resolved in accordance with the dispute resolution procedure set forth in this Article XV

15.2 Informal Resolution. If any such breach or dispute arises between the Parties, then either Party may provide written notice thereof to the other Party, which shall include a detailed description of the subject matter of the dispute. Each Party shall promptly designate a senior executive who shall have authority to resolve the dispute through negotiations. The senior executives shall obtain such information as may be necessary to inform themselves of the substance and particulars of the dispute, provided that no document discovery or depositions shall be required during negotiation and any document exchange shall be voluntary. The negotiation and any documents exchanged in connection with the negotiation shall be confidential and considered statements made in compromise negotiations within the meaning of the Federal Rule of Evidence 408 and any applicable state law, evidentiary rules or doctrines. The senior executives shall meet within twenty (20) Business Days of the notice, at a time and place mutually acceptable to the senior executives.

15.3 Binding Arbitration. If the senior executives are unable to resolve the dispute within twenty (20) Business Days of their first meeting or such later date as the senior executives may mutually agree, then the dispute shall be resolved solely and exclusively by binding arbitration. The following arbitration procedures will be used absent agreement of the Parties to different procedures for a given arbitration:

(a) The dispute shall be finally settled by binding arbitration, before a single arbitrator, in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect, except as modified herein.

(b) The Party seeking relief from the other Party shall prepare and submit a request for arbitration (the "Demand"), which will include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief.

(c) Arbitration shall be held in Columbia, South Carolina. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1 et seq.

(d) The arbitrator must be an individual with knowledge and experience in the electric industry, and shall be selected by the Parties or (failing their agreement on an arbitrator) by the AAA in accordance with Rule 11 of the AAA Commercial Arbitration Rules.

(e) The award shall be a reasoned opinion in writing and shall set forth findings of facts and conclusions of law. The award shall be final and binding upon the Parties. The arbitrator shall be authorized in its discretion to grant pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction.

(f) This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

(g) Unless otherwise ordered by the arbitrator, each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties expressly agree that the arbitrator shall have no power to consider or award any form of damages barred by this Agreement.

ARTICLE XVI

MISCELLANEOUS

16.1 Assignment.

(a) This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Buyer, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the Facility to any Financing Party (a "Financing Assignment"), (ii) directly or indirectly assign this Agreement and the Facility to an affiliate or subsidiary of Seller, (iii) assign this Agreement and the Facility to any entity through which Seller is obtaining financing or capital for the Facility and (iv) assign this Agreement and the Facility to any Person succeeding to all or substantially all of the assets of Seller; provided, however, that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee. However, any assignment of Seller's right and/or obligations under this Agreement shall not result in any change to Buyer's rights and obligations under this Agreement. Buyer's consent to any other assignment shall not be unreasonably withheld if Buyer has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining a Renewable Facility or a Qualifying Facility, as applicable, comparable to the Facility and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the Facility and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

(b) Following receipt of notice from a Party that a Financing Assignment has occurred together with contact information for the Financing Party, the non-financing Party agrees as follows:

(i) At any time that a notice of breach or notice of Event of Default is delivered pursuant to Section 12.1, the non-defaulting Party shall concurrently send a copy of such notice to the Financing Party;

(ii) In the absence of any written objection from the defaulting Party, the non-defaulting Party shall accept a cure of the breach or Event of Default from the Financing Party, subject to the limitations of the applicable Cure Periods; and

(iii) In the event that a financing Party exercises its rights and remedies under a Financing Assignment, the non-defaulting Party shall accept performance by the Financing party of the defaulting Party's obligations under this Agreement.

16.2 Notices. Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to Seller: James A. Johnston
Chief Executive Officer
NDS Energy, Inc.
P.O. Drawer 1629
Belmont, NC 28012

With a copy to:

Mark T. Shipley
11101 Zarod Road
Las Vegas, NV 89135

If to Buyer: South Carolina Electric & Gas Company
220 Operation Way
Cayce, SC 29033
Power Marketing Department
ATTN: Director of Power Marketing

With a copy to:

South Carolina Electric & Gas Company
220 Operation Way
Cayce, SC 29033
Power Marketing Department
ATTN: Power Marketer

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand and on deposit by the sending Party if delivered by courier or U.S. mail.

16.3 No Third-Party Beneficiary. No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under the Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any Person not a Party hereto.

16.4 No Dedication. No undertaking by one Party to the other under any provision of the Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect the status of Buyer as a body public and corporate or Seller as an independent individual or entity and not a public utility.

16.4 Integration; Amendment. The Agreement, together with all Attachments, constitutes the entire agreement between the Parties relating to the transaction described herein and supersedes any and all prior oral or written understandings. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

16.5 Governing Law. The Agreement is made in the State of South Carolina and shall be interpreted and governed by the laws of the State of South Carolina and/or the laws of the United States, as applicable.

16.6 Relationship of Parties.

(a) The duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and Buyer shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

(b) The relationship between Buyer and Seller shall be that of contracting party to independent contractor. Accordingly, subject to the specific terms of the Agreement, Buyer shall have no general right to prescribe the means by which Seller shall meet its obligations under the Agreement.

(c) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform Seller's obligations under the Agreement, including all federal, state, and local income, social security, payroll, and employment taxes, and statutorily mandated workers' compensation coverage. None of the persons employed

by Seller shall be considered employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee, or agent.

16.7 Good Faith and Fair Dealing; Reasonableness. The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of the Agreement. Unless expressly provided otherwise in this Agreement, (i) wherever the Agreement requires the consent, approval, or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed, and (ii) wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

16.8 Severability. Should any provision of the Agreement be or become void, illegal, or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be affected and shall continue in force. The Parties will, however, use their reasonable efforts to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and the Agreement as a whole.

16.9 Cooperation. The Parties agree to reasonably cooperate with each other in the implementation and performance of the Agreement. In this regard, Buyer agrees to provide such documents as Seller may reasonably request in connection with Seller's arrangements for bond financing, third-party financing or tax equity investors. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under the Agreement.

16.10 Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Seller and Buyer are "forward contract merchants" within the meaning of the United States Bankruptcy Code.

16.11 OSHA Construction Safety and Health Training. Seller shall comply with all applicable OSHA Rules. Seller shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for its onsite employees, which includes a course in construction safety and health approved by OSHA or a similar program approved by the department which is at least as stringent as an approved OSHA program, unless such employees have previously completed the required program. All employees are required to complete the program within sixty days of beginning work on such construction project. An employee found on a work site without documentation of the successful completion of the required training shall be afforded twenty days to produce such documentation before being subject to removal from the project.

16.12 Assent Not Waiver of Future Breach. No assent, express or implied, by either Party to any breach of the Agreement by the other Party shall be deemed to be a waiver of any subsequent breach.

16.13 Damage to Project. Subject to Article XI, Force Majeure, in the event that the Facility is destroyed or substantially damaged by fire, ice, snow, lightning, wind, explosion, aircraft or other vehicular damage, collapse, or other casualty, Seller shall repair or reconstruct the Facility as soon as reasonably possible. If Seller fails to do so, then Buyer may terminate this Agreement by giving thirty (30) days' written notice to Seller.

16.14 Confidentiality. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the Facility or of Purchaser's business ("Confidential Information") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the Facility. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "Representatives"), and affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information). Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 16.14, except as set forth in Section 16.15, 16.17 and 16.18. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 16.14 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 16.14. To the fullest

extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 16.14, but shall be in addition to all other remedies available at law or in equity. The terms of this Section 16.14 shall control over the provisions of any previous Confidentiality Agreement executed by and between the Parties with regard to the subject matter hereof.

16.15 Permitted Disclosures. Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

16.16 Goodwill and Publicity. Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and any related reporting rights.

16.17 Filing Agreement with the South Carolina Public Service Commission ("SCPSC"). Pursuant to Ordering Paragraph 3 of the SCPSC Order No. 81-214 issued in Docket No. 80-251-E, this Agreement is required to be filed by Buyer with the SCPSC within ten (10) days of its execution. Buyer shall use commercially reasonable efforts to satisfy such filing requirement and shall provide Seller with written notice promptly following the satisfaction of such filing requirement.

16.18 Review by SCPSC. Pursuant to SCPSC Orders Nos. 81-214 and 85-347 issued in Docket No. 80-251-E, this Agreement is subject to review by the SCPSC upon complaint by either Party, or pursuant to its own motion, and the terms herein may be modified in whole or in part or declared null and void by the SCPSC.

16.18.1 Provision of Information to the SCPSC. Buyer reserves right to provide to the SCPSC, upon request, information pertaining to this Agreement including, but not limited to records of the Facility's generation output and Buyer's purchases thereof, including copies of monthly statements of power purchases and data from meters and telemetering installed at the Facility. Buyer will advise Seller of the furnishing of any information.

16.18.2 Cooperation with the SCPSC. Buyer and Seller agree to work together in good faith to support the filing of this Agreement with the SCPSC, including providing response to any information requests, data requests, requests for interviews, and participation in any investigation, hearing, appeal, as applicable.

16.18.3 Termination. In the event that the SCPSC issues an order or other such regulatory directive with modification, suspension, investigation or other condition that has a material adverse effect on either Party, then the Parties agree to negotiate in good faith for a period of thirty (30) days an amendment to this Agreement that complies with such SCPSC order or directive. If the Parties cannot reach an agreement, either Party may terminate this Agreement upon notice to the other Party and neither Party shall have any obligation, duty or liability to the other arising hereunder under any claim or theory whatsoever except as to costs and balances incurred prior to the effective date of such termination.

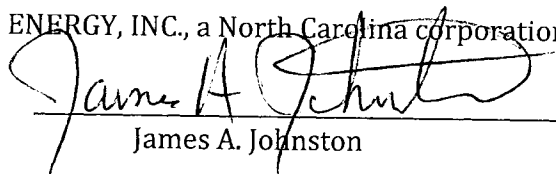
[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused the Agreement to be duly executed as of the day and year first above written.

Seller:

NDS ENERGY, INC., a North Carolina corporation

By:


James A. Johnston

Title: Chief Executive Officer

Buyer:

South Carolina Electric & Gas Company, a South Carolina Corporation

By:



Name:

Sarena D. Burch

Title:

Senior Vice President



ATTACHMENT A

Description of Facility

1. Land

Approximately 28.8 acres of land located at 289 Wilbert Way, City of St. Matthews, County of Calhoun, South Carolina, 29135

2. Building

Approximately 146,781 total square feet, consisting of approximately 134,780 square feet of warehouse space and 12,000 square feet of office space.

3. Equipment

- (a) Generator Type: Synchronous. Self-excited self-regulated
- (b) Technology: Reciprocating Gas Engine
- (c) Fuel Type and Source: Tire Syngas
- (d) Generator Rating (KVA): 1,311 KVA per Generator
- (e) Maximum Capacity (MW): 4.236 MW
- (f) Net Output (MW): 95% of rated capacity
- (g) Power Factor (%): 0.8-1.0 lagging
- (h) Operating Voltage(Kv): 480V, 60Hz, 3 Phase

ATTACHMENT B

